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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,434	03/31/2004	Ravindra L. Arudi	023829-0220	5476
7590	12/28/2007			
Edward L. Levine Cargill, Incorporated P.O. Box 5624 Minneapolis, MN 55440-5624				EXAMINER WEIER, ANTHONY J
				ART UNIT 1794
				PAPER NUMBER PAPER
				MAIL DATE 12/28/2007
				DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/814,434	ARUDI ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Anthony Weier	1794

**– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –**  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 04 October 2007.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1,3,4,6-20,22-33,35,36 and 48-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1, 3, 4, 6-20, 22-33, 35, 36, and 48-52 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-11, 13-24, 26-36 and 48 are rejected under 35 U.S.C. 102(b) as being anticipated by Schapiro (U.S. Patent No. 3988511).

Schapiro discloses a dispersible protein composition comprising soy protein (e.g. 90%); hydroxylated lecithin on the surface of same (e.g. 1%; expected to be pure or possess oil within the limits set forth in the instant claims), and no apparent fiber (unless incidentally present and well below the limit set forth in the instant claims), wherein said composition is instantly dispersible (which is expected to fall within the time range called for in the instant claims). See col. 1, lines 43-68; col. 3, lines 34-51; col. 4, lines 29-55; Example 1.

Due to the similarity in processing and composition between the product of Schapiro and that of the instant invention, it is considered expected that same would possess the other characteristics and properties set forth in the instant claims (pile spread, pile apex angle, surface tension index, etc.).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, 13-18, 21, 27, 34, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsukuda et al (U.S. Application Publication 2003/0124226) or JP 60-126036 and further taken together with Schapiro and either one of Akoh et al or Burdock.

Tsukuda et al discloses a dispersible protein composition comprising soy protein (e.g. 90%; Example 1), lecithin (purified and enzyme treated), and no apparent fiber (unless incidentally present and well below the limit set forth in the instant claims), wherein said composition is dispersible within 5 seconds and has a particle size of 120 to 350 microns.

Due to the similarity in processing and composition between the product of Tsukuda et al and that of the instant invention, it is considered expected that same would possess the other characteristics and properties set forth in the instant claims (pile spread, pile apex angle, surface tension index, etc.).

JP 60-126036 discloses a dispersible protein composition comprising soy protein (which can be well above 90%; see Abstract), lecithin (expected to be pure or possess oil within the limits set forth in the instant claims), and no apparent fiber (unless incidentally present and well below the limit set forth in the instant claims), wherein said

composition has excellent dispensability (which is expected to fall within the time range called for in the instant claims).

Due to the similarity in processing and composition between the product of JP 60-126036 and that of the instant invention, it is considered expected that same would possess the other characteristics and properties set forth in the instant claims (pile spread, pile apex angle, surface tension index, etc.).

Tsukuda et al and JP 60-126036 are both silent regarding the lecithin material comprising hydroxylated lecithin. However, it is notoriously well known to employ hydroxylated lecithin in aiding in the dispensability of soy particles as taught, for example, in Schapiro (col. 3, lines 34-51). It is furthermore, known that hydroxylated lecithin has the benefits of improved stability and dispensability in aqueous media as taught, for example, Akoh et al and Burdock. It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed the hydroxylated version of lecithin for such improvements.

5. Claims 12 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over either one of (A) Shapiro (U.S. Patent No. 3988511) or (B) JP 60-126036 taken together with Schapiro and either one of Akoh et al or Burdock.

Although JP 60-126036 provides a product having a size that overlaps that called for in the instant claims (e.g. claim 12), it is not clear as to the median of the particles therein (200 mesh in JP 60-126036 is the upper limit which is about 75 microns). Shapiro is silent regarding the particle size altogether. Nevertheless, such determination of particle size depending on desired texture of the product, speed of

dispensability based on size, etc. would have been well within the purview of a skilled artisan, and it would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at the particular particle median size called for in the instant claims through routine experimental optimization.

***Response to Arguments***

6. Applicant's arguments filed 10/4/07 have been fully considered but they are not persuasive.

Applicant argues that Schapiro does not include a hydroxylated lecithin having very low oil content and, therefore, a relatively low HLB value. It should be noted, however, that Schapiro discloses the use of hydroxylated lecithin considered to be pure or near same (which would provide a relatively high HLB content as called for in the instant claims) wherein said hydroxylated lecithin is then combined with oil (e.g. col. 3, lines 52-66). The instant claims do not exclude the presence of added oil within the composition by use of the open language "comprising".

All other arguments have been addressed in view of the rejections above.

***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

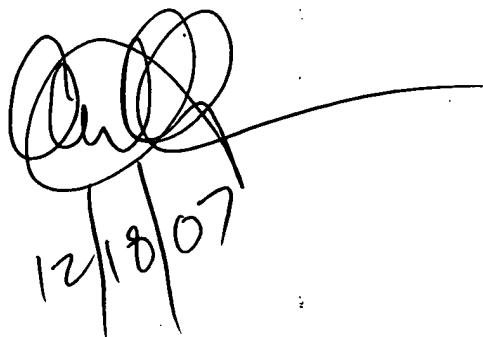
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Weier  
Primary Examiner  
Art Unit 1761

Anthony Weier  
December 18, 2007

  
12/18/07